

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANDRE HAYES,

Petitioner,

V.

KEN QUINN,

Respondent.

Case No. C06-0507RSL

ORDER OF TRANSFER

This matter comes before the Court on petitioner's letter requesting that the Court suspend his sentence. Petitioner was previously warned that “[a]ny further requests for relief contained in letters will not be considered.” (Dkt. #24).

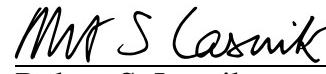
Even if the Court were inclined to consider petitioner’s request, it is without jurisdiction to do so. The Ninth Circuit has made clear that § 2254 is the exclusive avenue for a state prisoner to challenge the constitutionality of his detention when the prisoner is in custody pursuant to a state court judgment. White v. Lambert, 370 F.3d 1002, 1007 (9th Cir. 2004). Because petitioner is challenging his sentence, his current motion must be construed as a request for relief pursuant to § 2254. However, Hayes’ prior petition challenging the same conviction was dismissed with prejudice. Accordingly, the instant petition must be deemed successive. This Court is without

1 jurisdiction to consider a successive petition or motion until the Ninth Circuit Court of
2 Appeals has authorized its filing. 28 U.S.C. § 2244(b)(3)(A). Accordingly, this case is
3 hereby TRANSFERRED to the Ninth Circuit Court of Appeals, in the interests of justice,
4 pursuant to 28 U.S.C. § 1631 and Ninth Circuit Rule 22-3.

5 Petitioner is advised that this transfer does not of itself constitute compliance with
6 § 2244(b)(3) and Ninth Circuit Rule 22-3. Petitioner must still file a motion for leave to
7 proceed in the Court of Appeals and make the showing required by § 2244(b)(2).

8 The Clerk of the Court is directed to transfer petitioner's motion to suspend his
9 sentence (Dkt. #26) to the Ninth Circuit Court of Appeals. The Clerk shall, however,
10 retain a copy of the motion and of this Order in the docket.

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12 DATED this 18th day of March, 2010.
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16 Robert S. Lasnik
United States District Judge
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